SECOND DIVISION
February 25, 2014

No. 1-11-2461

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 15400
	)	
JAMES BEAMON,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.

Presiding Justice Harris and Justice Simon concurred in the judgment.

O R D E R

HELD: Judgment entered on defendant's convictions of aggravated criminal sexual assault and aggravated kidnapping affirmed over his claims that the State failed to prove him guilty of aggravated criminal sexual assault beyond a reasonable doubt, and that his confinement of the victim was incidental to that offense; cause remanded with directions.

& 1 Following a bench trial, defendant James Beamon was found guilty of six counts of aggravated criminal sexual assault and four counts of aggravated kidnapping. He was then sentenced to concurrent terms of 30 years on each count of aggravated criminal sexual assault

and 25 years on each count of aggravated kidnapping, with the convictions for those two separate crimes to run consecutively for a total of 55 years. On appeal, defendant contends: (1)

that the State failed to prove him guilty of aggravated criminal sexual assault beyond a reasonable doubt; (2) that his aggravated kidnapping convictions must be vacated where his confinement of the victim was incidental to the aggravated criminal sexual assault; and (3) that certain of his convictions should be vacated under the one-act, one-crime rule. For the following reasons, we affirm and remand with directions.

& 2 BACKGROUND

& 3 On July 20, 2008, defendant led 13-year-old M.H. from his home and into an abandoned building at 2101 West 52nd Street, in Chicago, where he then sexually assaulted him. He was apprehended after M.H. escaped and alerted a Cook County deputy sheriff of his whereabouts. Defendant was charged with six counts of aggravated criminal sexual assault, four counts of aggravated kidnapping, and two counts of aggravated criminal sexual abuse.

& 4 At trial, Cook County deputy sheriff Michael Stoner testified that about 7:45 pm. on July 20, 2008, he was working on his garage in the 2100 block of 52nd Street with his sister, his niece, and a contractor, when he observed a young man running down an alley without clothes. He told the boy "come here" and asked "what's going on?" And the boy replied, "[T]his guy is trying to rape me." Deputy Stoner asked for a description of the assailant, and the boy described him as bald, wearing a gray t-shirt, and having a mark on the back of his head.

& 5 Deputy Stoner and the contractor ran to the area of 2101 West 52nd Street, which is where the boy had told him the assailant could be found. When they arrived at that location, Deputy Stoner saw an individual matching the assailant's description coming out the window of an abandoned building. He flashed his star, announced his office, and said "[o]n the wall." He then handcuffed the individual and brought him in view of the boy, who, in a terrified state, said,

"get him away from me. Take him back. Get him away from me." Deputy Stoner identified defendant in court as the individual whom he apprehended that day.

& 6 M.H. testified that he is 16 years old and was born on January 11, 1995. On the afternoon of July 20, 2008, defendant came to his family's apartment, in Chicago, and asked if he wanted to make some money. M.H. responded that he did and testified that he "wanted to make some money because [he] needed a book bag and pencils and paper and stuff for [him] and [his] sisters because [they] had school." M.H.'s mother subsequently spoke with M.H. in another room and handed him a knife, which he put in his pocket. M.H. then left with defendant, whom he had never met prior to that day.

& 7 M.H. and defendant initially went to the house of defendant's mother, and M.H. just stood next to defendant's mother until they left, which was a short time later. They then went to the house of defendant's sister, and M.H. waited outside until defendant eventually came out carrying a blue bag. M.H. testified that he was keeping track of his time with defendant that day by using a watch that defendant had given him.

& 8 After leaving the house of defendant's sister, M.H. led defendant to an abandoned building that M.H. had never been to before. They went to the back of the building, and M.H. was about to climb in a window when he hesitated. He testified that he was feeling "[v]ery scared and worried," but that defendant asked him, "Don't you want to make some money?" M.H. testified that he "was like, 'Yes,' " and he proceeded to climb in the window. He and defendant were alone inside the building and there was wallpaper and garbage on the floor. M.H. testified that he believed they were there to work on the building.

& 9 M.H. and defendant ascended three floors to the attic, at which point defendant turned to M.H. and told him to take off his clothes. M.H. responded, "No," and put his hand in his pocket

to grab his knife; however, defendant told him that he had a gun and put his hands behind his back as if he did. M.H. was "super scared" and took off his clothes, including a t-shirt, shorts, and shoes. Defendant then instructed him to "get on the stairs," and when M.H. complied, he "put his mouth on [M.H.'s] penis area." M.H. testified that he was "terrified" and "scared" and that he tried to get up, but defendant grabbed his wrist. He then told defendant that he needed to use the bathroom, and defendant responded, "You are not going to go anywhere with your clothes off." At that point, M.H. took off the watch, threw it at defendant, and said, "Watch me." He then ran into an alley and told two women that "somebody tried to rape me."

& 10 Deputy Stoner subsequently came out of his garage and asked M.H. what had happened. After M.H. told him, Deputy Stoner went to the abandoned building and returned with defendant in handcuffs. He walked defendant towards M.H., and M.H. testified that he became "all hysterical" and said, "Get him away from me, get him away from me." Thereafter, an ambulance came and took M.H. to Comer Children's Hospital.

& 11 At the hospital, M.H. spoke with a nurse and doctor about what had happened in the abandoned building. He then returned home and tried to "wash all the dirt off." After about 15 minutes, however, a police officer came to the door, and M.H. returned to the hospital again. Back at the hospital, a doctor swabbed him on his "penis area and [his] bottom."

& 12 On cross-examination, M.H. stated that he never saw defendant with a gun. He also stated that defendant had spent the night at their apartment on July 18 and that he told police that defendant was an acquaintance of his mother.

& 13 Chicago police officer Keith Lindskog testified that about 8 p.m. on July 20, 2008, he and his partner pulled into an alley behind the building at 2101 West 52nd Street and observed Deputy Stoner with defendant in handcuffs on one side of the alley, and M.H. with a towel

wrapped around him on the other side. After speaking with Deputy Stoner and M.H., they removed the handcuffs from defendant, placed their own handcuffs on him, and put him in the back of their squad car. Officer Lindskog and another officer then entered the vacant building from the rear, though a window off of which a board had been removed, and searched for other victims or offenders. In the attic, they observed items of clothing, drinks, an old milk crate, and a watch, which was on the stairs leading to the attic. The officers eventually brought defendant to Area 1 headquarters.

& 14 Edward Tansey, an investigator for the Cook County State's Attorney's office, testified that on September 30, 2008, he collected a buccal swab from defendant. He took it home with him that night because it was late in the day and he was unable to get to the crime lab. The next day, at 8:30 a.m., he delivered the buccal swab kit to the Chicago Police Crime Lab at Homan Square where it was inventoried under number 11453944. Tansey testified that the kit was sealed the entire time that it was in his care, custody, and control.

& 15 Dr. Ricardo Santayana testified that about 9 p.m. on July 20, 2008, he met with M.H. in the emergency department at Comer Children's Hospital. M.H. then returned to the hospital sometime after 11 p.m., and Dr. Santayana met with him again in the emergency department, with Dr. Veena Ramaya present, to collect evidence for a sexual assault kit. Prior to the sexual assault kit being done, M.H. reported that he "had his genitalia licked" by another man. Dr. Santayana conducted a general examination of M.H. and performed some parts of the sexual assault kit. Dr. Santayana did not find any evidence of trauma to M.H.'s body. He also testified that M.H.'s genital area, rectal area, and mouth were swabbed and that those swabs were given to Nurse Mendoza.

& 16 On cross-examination, Dr. Santayana stated that he conducted a physical examination of M.H. around 9 p.m. on the night in question, but that a sexual assault kit was not done at that time for reasons he cannot remember. He stated that M.H. was later called back to the hospital for a sexual assault kit to be performed. Dr. Santayana was also questioned regarding a chart he completed pursuant to his examination of M.H. On the chart, there was a section titled "acts described by the patient," which contained the question: "[W]as oral sex performed on patient by assailant[?]" Dr. Santayana stated that he checked the boxes for "touched" and "unsure."

& 17 Chicago police officer Mark Davis testified that on July 20, 2008, he was instructed to enter the building at 2101 West 52nd Street, photograph the scene, and collect any evidence in the building. He recovered a bundle of clothes, a pocketknife that was found among the clothes, and a wristwatch.

& 18 Diane Mendoza testified that she was a registered nurse for University of Chicago Health Centers on July 20, 2008. That evening, she and two doctors completed a sexual assault kit on M.H. Once all the samples had been taken and labeled, she sealed the kit with a sticker containing her name and the date. She then called 911, asked for the kit to be picked up from the emergency room, and locked it in a cabinet.

& 19 Chicago police officer John Zalewski testified that on the morning of July 21, 2008, he picked up a sealed sexual assault kit from the emergency room at Comer Children's Hospital and brought it to 6355 South Wentworth Avenue, where it was inventoried under number 11364940.

& 20 The State called Casey Karaffa, a forensic scientist for the Illinois State Police, as an expert in the field of forensic biology. Karaffa testified that she received the sealed sexual assault kit performed on M.H., marked inventory number 11364940. She initially conducted the Phadebas test to search for the presence of saliva on three exhibits: the penile swabs, the scrotum

swab, and the penis/foreskin swab. Saliva was indicated as possibly present on the penile swabs, but the other swabs were inconclusive. She subsequently created sub-exhibits of the three swabs and the blood standard for M.H. She preserved the sub-exhibits for DNA analysis and placed them in the vault, in a sealed condition, to be stored until DNA analysis was completed. She then resealed the sexual assault kit and placed it in a different location to be returned to the Chicago police department.

& 21 On cross-examination, Karaffa stated that the Phadebas test is only a presumptive test and that a positive result does not mean that saliva is actually present. It means that amylase is present; however, amylase is found in bodily fluids other than saliva, including breast milk, perspiration, and vaginal secretions.

& 22 The State next called Brian Schoon, a forensic scientist for the Illinois State Police, as an expert in the field of DNA analysis. Schoon testified that on March 18, 2009, he performed DNA testing on the penile swabs of M.H. and identified a male DNA profile, which matched the DNA profile of M.H., but did not match the DNA profile of defendant. Then, on October 5, 2009, he preformed DNA testing on the scrotum and foreskin swabs of M.H. For both, he interpreted the results as showing a mixture of two human DNA profiles. He testified that assuming the mixtures included the DNA of M.H., a second human male DNA profile was present, and defendant cannot be excluded from having contributed to such. With respect to the scrotum swab, Schoon testified that approximately 1 in 8,000 black, 1 in 41,000 white, or 1 in 30,000 Hispanic unrelated individuals cannot be excluded from having contributed to the second male DNA profile. With respect to the foreskin swab, Schoon testified that approximately 1 in 12 trillion black, 1 in 38 trillion white, or 1 in 36 trillion Hispanic unrelated individuals cannot be excluded from having contributed to the second male DNA profile. On cross-examination,

Schoon stated that the DNA testing he performed on the scrotum and foreskin swabs cannot determine whether saliva was present.

& 23 The State rested. The defense moved for a directed finding, which was denied, then rested as well, without presenting any evidence. Following closing argument, the trial court found, *inter alia*, that M.H. testified "in a clear, concise, credible, and I will say courageous fashion" and that his testimony was corroborated by other evidence. Ultimately, the court found defendant guilty of six counts of aggravated criminal sexual assault and four counts of aggravated kidnapping, but not guilty of two counts of aggravated criminal sexual abuse. It then sentenced defendant to concurrent terms of 30 years on each count of aggravated criminal sexual assault and 25 years on each count of aggravated kidnapping, with the convictions on the two separate offenses to run consecutively for a total of 55 years.

& 24 ANALYSIS

& 25 In this appeal, defendant first contends that the State failed to prove him guilty of aggravated criminal sexual assault beyond a reasonable doubt. He specifically claims that the State failed to prove the element of sexual penetration beyond a reasonable doubt where M.H. testified that defendant put his mouth on his "penis area," as opposed to his penis. The State responds that M.H.'s testimony combined with the DNA evidence was sufficient to establish defendant's guilt beyond a reasonable doubt.

& 26 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). It is the responsibility of the trier of fact to determine the credibility of the witnesses and

the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Campbell*, 146 Ill. 2d at 375.

& 27 To sustain defendant's convictions of aggravated criminal sexual assault in this case, the State was required to prove that defendant committed criminal sexual assault and that an aggravating circumstance existed during the commission of the offense. 720 ILCS 5/12-14(a) (West 2008). A person commits criminal sexual assault if he commits an act of sexual penetration by the use of force or threat of force. 720 ILCS 5/12-13(a)(1) (West 2008). "Sexual penetration" includes "any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person." 720 ILCS 5/12-12(f) (West 2008). The aggravating circumstances alleged by the State to be present in this case were: (1) defendant acted in such a manner as to threaten or endanger the life of the victim (720 ILCS 5/12-14(a)(3) (West 2008)); and (2) the criminal sexual assault was perpetrated during the course of the commission of another felony by the accused (720 ILCS 5/12-14(a)(4) (West 2008)).

& 28 Viewed in the light most favorable to the prosecution, the record shows that on July 20, 2008, defendant lured 13-year-old M.H. into a vacant building at 2101 West 52nd Street with the promise that he would earn some money. Then, when he and M.H. were in the attic, he instructed M.H. to take off his clothes. M.H. initially refused and reached into his pocket for a knife. However, defendant told M.H. that he had a gun and put his hands behind his back as if he did. M.H. was "super scared" and thus took off his clothes. Defendant then directed M.H. to "get on the stairs," put his mouth on M.H.'s "penis area," and prevented him from getting up by

grabbing his wrist. Eventually, however, M.H. was able to flee from defendant, and he ran naked into an alley and told bystanders that "somebody tried to rape me." Deputy Stoner, who was in the area working on his garage, obtained a description of the assailant from M.H. and ran to the vacant building where the assault had occurred. When he arrived, Deputy Stoner observed defendant, who matched the description of the assailant, coming out of a window and detained him. He then brought defendant in view of M.H., who was terrified and said, "get him away from me. Take him back. Get him away from me." This evidence was more than sufficient to establish defendant's guilt of aggravated criminal sexual assault beyond a reasonable doubt. 720 ILCS 5/12-14(a)(3), (4) (West 2008).

& 29 Defendant disagrees and claims that the State failed to prove the element of sexual penetration beyond a reasonable doubt. He specifically argues that M.H.'s testimony that defendant put his mouth on his "penis area" was insufficient evidence of sexual penetration. He cites this court's decision in *People v. Oliver*, 38 Ill. App. 3d 166 (1976) as on point.

& 30 In *Oliver*, defendant was convicted of deviate sexual assault and claimed on appeal that the evidence was insufficient to prove that his penis touched the anus of the complaining witness. *Oliver*, 38 Ill. App. 3d at 170. The complaining witness in that case "did not precisely testify to the penis-anus touching but characterized defendant's conduct by a reference to 'in my butt.' " *Oliver*, 38 Ill. App. 3d at 170. Additional testimony also established "that the complaining witness had stated out of court in her husband's presence that the defendant's penis went along her 'cheeks.' " *Oliver*, 38 Ill. App. 3d at 170. The reviewing court ultimately found insufficient evidence of an act involving the sex organ of defendant and the anus of the complaining witness. *Oliver*, 38 Ill. App. 3d at 170. The court thus concluded that defendant

was not proved guilty of deviate sexual assault beyond a reasonable doubt. *Oliver*, 38 Ill. App. 3d at 170.

& 31 The State claims that defendant's reliance on *Oliver* is misplaced and that *People v. Atherton*, 406 Ill. App. 3d 598 (2010), is more analogous to the case at bar. In *Atherton*, the defendant was convicted of predatory criminal sexual assault of a child. *Atherton*, 406 Ill. App. 3d at 601. He claimed on appeal that the evidence did not establish beyond a reasonable doubt that he touched the victim's anus with his penis. *Atherton*, 406 Ill. App. 3d at 608. The victim testified as follows:

> "Ariana testified that the defendant did 'pushups' over her and that his 'private' touched her 'private' on the inside. Ariana explained that a 'private' was what someone used to urinate. When asked if the defendant touched her anywhere besides her 'private,' Ariana responded that he had not. Upon further questioning if the defendant had touched her anywhere else, Ariana said 'It was kind of in my butt.' When encouraged to clarify if it was inside or outside, Ariana replied 'inside.' When asked how that felt, Ariana replied, 'I didn't really feel anything.' She stated she poops with her butt and '[h]e didn't put it inside there. It went in there as it was like going into my private. He didn't put it in where I poop.' She repeated, 'He didn't put it exactly in where I poop,' and she clarified she did not feel anything when he did that. When again questioned, 'You said [the defendant's private] didn't go inside that

> part, but did it touch that part at all?' Ariana responded, 'Yes.'
>
> *Atherton*, 406 Ill. App. 3d at 609.

The reviewing court acknowledged that Ariana's testimony "at times was seemingly contradictory," but noted that it was the province of the jury to resolve any conflicts or inconsistencies in her testimony. *Atherton*, 406 Ill. App. 3d at 609. The court therefore concluded that Ariana's testimony "that the defendant's penis went into her anus as it was going into her vagina" was sufficient to sustain defendant's conviction of predatory criminal sexual assault of a child. *Atherton*, 406 Ill. App. 3d at 609.

& 32 We agree with the State that the instant case is more analogous to *Atherton*, than to *Oliver*. Unlike *Oliver*, it was reasonable for the trial court to conclude in this case that there was contact between defendant's mouth and the penis of M.H. M.H. testified at trial that defendant "put his mouth on [M.H.'s] penis area." He then testified that the doctor at the hospital swabbed him on his "penis area." The evidence showed that M.H. was swabbed on his penis, scrotum, and foreskin. It was thus clearly reasonable for the trial court to conclude that M.H. used or understood the term "penis area" as a reference to both his penis and scrotum. See *Sutherland*, 223 Ill. 2d at 242. There was additional evidence of contact between defendant's mouth and the penis of M.H. as well. Dr. Santayana testified that M.H. reported having "had his genitalia licked" by another man. Also, the State presented evidence that the scrotum and foreskin swabs of M.H. contained two DNA profiles and that defendant cannot be excluded from having contributed the second profile. In light of the above evidence, we find no merit to defendant's claim that the State failed to establish contact between his mouth and the penis of M.H. We therefore affirm his convictions of aggravated criminal sexual assault.

& 33 Defendant next contends that his aggravated kidnapping convictions must be vacated because his confinement of M.H. was incidental to the aggravated criminal sexual assault. Citing *People v. Smith*, 91 Ill. App. 3d 523, 529 (1980), he notes that "[a] defendant cannot be convicted of kidnaping where the asportation or confinement of the complainant was merely incidental to another crime." The State responds that there was "more than sufficient" evidence to convict defendant of aggravated kidnapping under the factors set forth in *Smith*.

& 34 Before we consider the merits of defendant's claim, we must first resolve a dispute between the parties regarding the proper standard of review to be applied here. Defendant maintains that a *de novo* standard of review is appropriate in this case because the question he presents "involves the application of Illinois law to undisputed facts." The State, however, argues that a sufficiency of the evidence standard should apply because defendant is "obvious[ly]" challenging the inferences drawn by the trial court.

& 35 This court settled the question of the proper standard to be applied in *People v. McCarter*, 2011 IL App (1st) 092864, cited by the State. In *McCarter*, like here, defendant argued for the reversal of his aggravated kidnapping conviction on the grounds that the asportation of the victim was incidental to his murder. *McCarter*, 2011 IL App (1st) 092864, ¶ 59. Although he argued for *de novo* review claiming the facts were not in dispute, this court noted that "when a defendant challenges incriminating inferences that may have been drawn by the trier of fact from the evidence, the challenge constitutes a claim against the sufficiency of the evidence." *McCarter*, 2011 IL App (1st) 092864, ¶ 60. We held that "[b]ecause the defendant's challenge is directed at the quantum of evidence presented against him, the correct standard of review is that which applies to the sufficiency of the evidence challenge: whether any rational trier of fact could have found the defendant guilty beyond a reasonable doubt of aggravated

kidnapping, taking the evidence in the light most favorable to the prosecution." *McCarter*, 2011 IL App (1st) 092864, ¶ 60. We agree with the court in *McCarter* that the sufficiency of the evidence standard is the proper standard to be applied in a case such as this one. That being said, we now turn to the substance of defendant's claim.

& 36 The Criminal Code of 1961 provides that a person is guilty of aggravated kidnapping when he commits the offense of kidnapping and also commits another felony upon his victim. 720 ILCS 5/10-2(a)(3) (West 2008). "Kidnap[p]ing occurs when a person knowingly: (1) [a]nd secretly confines another against his will, or (2) [b]y force or threat of imminent force carries another from one place to another with intent secretly to confine him against his will, or (3) [b]y deceit or enticement induces another to go from one place to another with intent secretly to confine him against his will." 720 ILCS 5/10-1(a)(1)-(3) (West 2008).

& 37 Here, defendant was convicted of aggravated kidnapping under theories of secret confinement (Counts 7 and 8) and inducement (Counts 9 and 10), with the predicate felonies being aggravated criminal sexual assault and criminal sexual assault, respectively. "To determine whether an asportation or detention rises to the level of kidnapping as a separate offense, four factors must be considered: (1) the duration of the asportation or detention; (2) whether the asportation or detention occurred during the commission of a separate offense; (3) whether the asportation or detention that occurred is inherent in the separate offense; and (4) whether the asportation or detention created a significant danger to the victim independent of that posed by the separate offense." *People v. Jackson*, 281 Ill. App. 3d 759, 768 (1996) (citing *Smith*, 91 Ill. App. 3d 523).

& 38 Beginning with the first factor, we find that the asportation and detention of M.H. extended for a significant period of time. The record shows that defendant lured M.H. from his

home with the promise of making some money and then led him to the attic of a vacant building where he was detained and sexually assaulted. See *People v. Brown*, 214 Ill. App. 3d 836, 847 (1991) (noting that kidnapping can occur when asportation is induced by deceit or enticement and accompanied with the requisite mental state). The record is unclear regarding the exact amount of time that elapsed during the journey from M.H.'s home to the attic of the building, but it was clearly a significant interval given that defendant and M.H. stopped at the houses of both defendant's mother and sister on the way. Although defendant argues that M.H. was not detained inside the building for a prolonged period of time, we note that " 'it is well settled that "a kidnaping conviction is not precluded by the brevity of the asportation or the limited distance of the movement." ' " *People v. Watson*, 342 Ill. App. 3d 1089, 1099 (2003) (quoting *People v. Jackson*, 331 Ill. App. 3d 279, 294 (2002)). "Indeed, this court has previously held that an asportation of less than one block, and a detention of a few minutes were sufficient to support a separate kidnaping conviction." *Jackson*, 331 Ill. App. 3d at 294.

& 39 With respect to the second factor, we also find that the asporation of M.H. did not occur during the commission of the offense. As noted above, the asportation of M.H. began when M.H. was induced to leave his home with the promise of money. This was long before the sexual assault took place and, therefore, did not occur during the commission of the sexual assault.

& 40 Finally, the third and fourth factors unquestionably support separate kidnapping convictions in this case. "The asportation and detention of a victim are not elements of the offense of aggravated criminal sexual assault." *People v. Quintana*, 332 Ill. App. 3d 96, 107 (2002). Moreover, this court has recognized that a private location carries the potential of more serious criminal activity and that "a significant and independent danger arises where a victim is forced out of a public area and into an abandoned apartment because as a result of the

asportation, a victim's signal for help is more difficult to detect and the likelihood of a victim being seen by a passerby is greatly decreased." *People v. Lloyd*, 277 Ill. App. 3d 154, 164 (1995). Having considered the necessary factors, we conclude that defendant's aggravated kidnapping convictions were not merely incidental to the sexual assault that occurred.

& 41 Defendant lastly contends that five of his convictions for aggravated criminal sexual assault and two of his convictions for aggravated kidnapping must be vacated under the one-act, one-crime rule. The State concedes that defendant's surplus convictions should be vacated and recommends that the mittimus be corrected to reflect one conviction of aggravated criminal sexual assault (Count 1) and two convictions for aggravated kidnapping (Counts 7 and 9).

& 42 "Under the one-act, one-crime rule, a defendant may be convicted for one crime resulting from a single act." *People v. Jimerson*, 404 Ill. App. 3d 621, 635 (2010). Where a violation occurs, sentence should be imposed on the more serious offense and the less serious offense should be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). "In determining which offense is the more serious, a reviewing court compares the relative punishments prescribed by the legislature for each offense." *Artis*, 232 Ill. 2d at 170. If the degree of the offenses and their sentencing classifications are identical, we may consider which of the convictions has the more culpable mental state. *Artis*, 232 Ill. 2d at 170-71. "[W]hen it cannot be determined which of two or more convictions based on a single physical act is the more serious offense, the cause will be remanded to the trial court for that determination." *Artis*, 232 Ill. 2d at 177.

& 43 In the case at bar, defendant was convicted of six counts of aggravated criminal sexual assault based on a single act of sexual penetration: contact between defendant's mouth and M.H.'s penis (Counts 1-6). He was also convicted of four counts of aggravated kidnapping. Two of those convictions were based on the same act of secret confinement (Counts 7 and 8),

with the predicate felonies being aggravated criminal sexual assault and criminal sexual assault, respectively. The other two were based on the same act of inducement (Counts 9 and 10), with the predicate felonies again being aggravated criminal sexual assault and criminal sexual assault, respectively.

& 44 We agree that five of defendant's aggravated criminal sexual assault convictions and two of his aggravated kidnapping convictions, one under each theory, must be vacated pursuant to the one-act, one-crime rule because they were based on the same acts. We are unable to determine, however, precisely which counts to vacate. Here, each of defendant's aggravated criminal sexual assault convictions was a Class X felony with the exact same mental state and 30-year sentence. 720 ILCS 5/12-14(d)(1) (West 2008). Similarly, each of defendant's aggravated kidnapping convictions was a Class X felony, with the two convictions under each theory sharing the same mental state and 25-year sentence. 720 ILCS 5/10-2(b) (West 2008). Under the circumstances, we must remand the cause to the circuit court to determine which of defendant's aggravated criminal sexual assault and aggravated kidnapping convictions are less serious and should be vacated. *Artis*, 232 Ill. 2d at 171-72, 177.

& 45 Accordingly, we affirm defendant's convictions for aggravated criminal sexual assault and aggravated kidnapping, and remand the cause to the trial court to vacate the less serious of those convictions, as directed.

& 46 Affirmed and remanded with directions.